IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3037 OF 2002

IN

INCOME TAX APPEAL (LOD) NO.907 OF 2002

The Commissioner of Income Tax-I ..Appellant.

V/s.

Aga Tours & Travels Pvt.Ltd. ..Respondent.

Mr.Pankaj Kapoor for appellant.

CORAM : V.C. DAGA AND J.P.DEVADHAR, JJ.

DATED : 30TH AUGUST, 2005.

P.C. :-

This matter was on our board on 04/03/2004 when two weeks time was granted to the appellant to file a better affidavit in support of the Notice of Motion as the affidavit filed was vague and did not contain all material particulars. After 17 months, this matter was again placed on our board on 23/08/2005 showing non compliance of our earlier order dated 04/03/2004. At the request of the learned counsel appearing for the department, one week time was granted to file better affidavit. Additional affidavit filed

shows that the matter was entrusted to Mr.Beni M. Chatterji, counsel for the department on 13/03/2002, who did not draft the the memo of appeal and appears to have returned the file without any draft on 25/06/2002. It is further stated that the file was thereafter again sent to another counsel Mrs.S.V.Bharucha on 26/06/2002, who drafted the memo of appeal and returned it in the 4th week of October, 2002 and thereafter, the appeal was filed on 02/11/2002. It is, thus, clear that the papers on both occasions were lying with the counsel, on one occasion for a period of 3 months and the second occasion for about 4 months which can hardly be justified. Unexplained time taken by the counsel who are regularly appearing for the department could hardly said to be a sufficient reason for condonation of delay.

2. Apart from this, no steps were taken to serve the reasons in spite of lapse of more than 17 months time, though as per rule and practice of this Court advance notice is must to curtail delay in disposal of cases. Under these circumstances, we see no reason to condone the delay in filing the appeal. The Notice of Motion, therefore, stands dismissed with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)